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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/035,025	12/28/2001	Vladimir V. Protopopov	10544/169	9200
757	7590	04/29/2004	EXAMINER	
GENERAL NUMBER 00757 BRINKS HOFER GILSON & LIONE P.O. BOX 10395 CHICAGO, IL 60610			KEANEY, ELIZABETH MARIE	
			ART UNIT	PAPER NUMBER
			2882	

DATE MAILED: 04/29/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/035,025	Applicant(s) PROTOPOPOV, VLADIMIR V.	
	Examiner Elizabeth Keaney	Art Unit 2882	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☒ Responsive to communication(s) filed on 24 November 2003.

2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) 1-25 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) ☐ Claim(s) _____ is/are allowed.

6) ☒ Claim(s) 1-25 is/are rejected.

7) ☐ Claim(s) _____ is/are objected to.

8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) ☐ The specification is objected to by the Examiner.

10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:

1. ☐ Certified copies of the priority documents have been received.

2. ☐ Certified copies of the priority documents have been received in Application No. _____.

3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) <input type="checkbox"/> Notice of References Cited (PTO-892) 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____. 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) 6) <input type="checkbox"/> Other: _____.
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DETAILED ACTION

Receipt is acknowledged of the Remarks filed 24 November 2003 and the Notice of Appeal filed 27 February 2004.

Response to Arguments

Applicant argues on page 2, lines 9+ that the rejection dated 21 August 2003 was improperly made final. The Examiner agrees and regrets any inconvenience.

Therefore, the Office Action dated 21 August 2003 will be treated as a Non-Final Rejection.

Applicant's arguments see page 4, lines 3+, filed 21 August 2003, with respect to claims 1-18 and 19-25 have been fully considered and are persuasive. The 102 and 103 rejections of claims 1-18 and 19-25 have been withdrawn. However, the Double Patenting Rejection with respect to claims 1-17 and 19-25 has been maintained.

Claims 1 and 19 are objected to because of the following informalities:

- Claim 1, line 2: "a beam of radiation"; should be --a beam of penetrating radiation--.
- Claim 19, line 2: "beam of radiation"; should be --a beam of penetrating radiation--.

Appropriate correction is required.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-17 and 19-25 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-24 of copending Application No. 09/797,498. Although the conflicting claims are not identical, they are not patentably distinct from each other because one skilled in the art would recognize that a Fabry-Perot analyzer receives a first and second portion of a beam of radiation and suppresses the intensity of the first portion of the beam and transmits the second portion of the beam. Therefore, a Fabry-Perot analyzer anticipates the analyzer as claimed in claim 1. Accordingly, it would have been obvious to one of ordinary skill in the art to claim the Fabry-Perot analyzer more broadly as just an analyzer.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Allowable Subject Matter

Should the above Double Patenting rejection be overcome by the filing of a Terminal Disclaimer, Claims 1-25 would be allowable over the prior art.

The following is a statement of reasons for the indication of allowable subject matter:

The prior art of record discloses an imaging system comprising an analyzer that receives a first and second portion of a beam of penetrating radiation and transmits the first portion of the beam to a detector and filters out the second portion of the beam, wherein the second portion of the beam does not impinge the detector. However, the prior art fails to teach or fairly suggest an imaging system comprising an analyzer that receives a first and second portion of a beam of penetrating radiation, suppresses the intensity of the first portion of the beam of radiation and transmits the second portion of the beam, wherein both the first portion of the beam having a suppressed intensity and the second portion of the beam impinge the detector in order to generate an image as claimed in claims 1 and 19. Claims 1-18 and 20-25 would be allowable by virtue of their dependency.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within

TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Elizabeth Keaney whose telephone number is (571)272-2489. The examiner can normally be reached on Monday-Thursday 5:30-4.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ed Glick can be reached on (571)272-2490. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


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EDWARD J. GLICK
SUPERVISORY PATENT EXAMINER